

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re  
MOTORS LIQUIDATION COMPANY  
f/k/a GENERAL MOTORS CORP. et al

Debtors.

Chapt. 11

Case #2009-50026-REG  
(Jointly Administered)  
Judge Robert E. Gerber

CLAIM NUMBERS OF THE COURT:  
Richard & Elise Birdsall= #1745  
Elise Birdsall= #1746

CLAIM NUMBERS OF THE CLAIMS AGENT:  
Elise Birdsall, filed 10/09/09=7617  
Richard Birdsall, filed 10/09/09=7618

RESPONSE TO DEBTOR'S FIFTEENTH OMNIBUS OBJECTION TO CLAIMS, (DOC. #5731) AND MOTION TO MERGE CLAIMS AGENT'S "CLAIM NUMBERS" 58954 & 65890 INTO #7617 & #7618 BY CLAIMANTS, RICHARD AND ELISE BIRDSALL

Claimants, Richard and Elise Birdsall, now claimants in this Bankruptcy Proceeding, hereby file their Response to Debtors' Fifteenth Omnibus Objection To Claims and their Motion to Merge the Misnomered Subsequent "Claims" into their Claims originally filed on Oct. 9, 2009.

1. Claimant, Richard E. Birdsall, filed his Proof of Claim Forms on Oct. 7, 2009, received by Garden City Group Oct. 9, 2009. Said Proof of Claim, of Richard E. Birdsall had, appended to it, Exhibits. A, B, C & D. The Proof of Claim Form of Claimant, Elise M. Birdsall incorporated by reference said Exhibits, which were attached to her husbands Proof of Claim, and her Proof Claim, also mailed on Oct. 7, 2009, was also filed

Oct. 9, 2009. **NO SUPERCEDING “CLAIMS” WERE EVER FILED BY EITHER OF THESE CLAIMANTS.**

Both Claimants have always, only had the said one “claim” each, filed on Oct. 9, 2009 by each of them.

2. Find attached hereto as Ex. A., The Tracking Confirmation, from the U.S.Postal Service, showing that the said Proofs of Claim, mailed from Port Orange Fl. On Oct. 7, 2009 were delivered to the Garden City Group on Oct. 9, 2009. Claimants’ attorney has also re-confirmed said delivery with Garden City Group, today and it was confirmed, by Garden City and by Judy, of the Claims Agent’s office, that said original Claims were received and filed on Oct. 9, 2009. As the result of the above facts, both of these Claimants are in total compliance with the Order of this Court, filed Sept. 16, 2009, which mandated that these Proofs of Claim be filed by Nov. 30, 2009.
3. The confusion arose, with these claims, when the undersigned filed a “First Amendment To Proof of Claim dated Nov. 20, 2009 which was filed, by the Claims Agent on Nov. 24, 2009 and given “Claim #65890” and the same document was filed on Nov. 27, 2009, and given “Claim #58954.” Said Amendment is attached hereto as Ex. B. Since the “Amendment” to their original claims was NOT, actually a new claim,

said ‘Amendment’ should not have additional “Claim numbers” but should hereby be merged with their original claims respectively filed on Oct. 9, 2009.

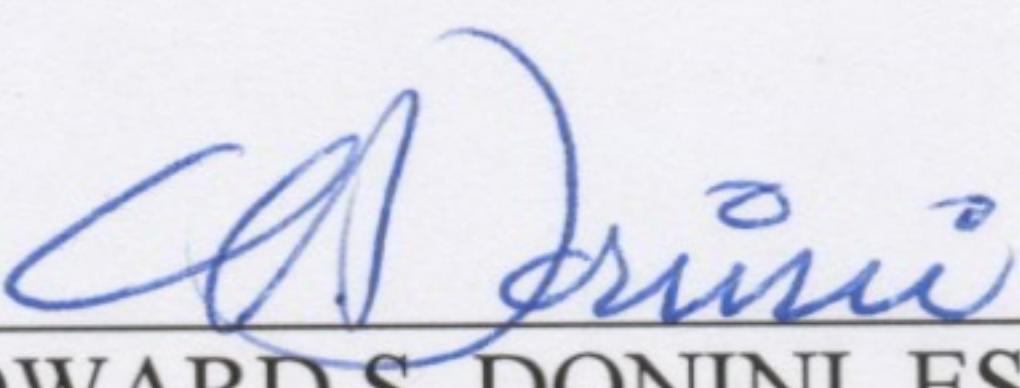
4. Richard Birdsall, was seriously injured, when the defective roof molding, on his 2000 Oldsmobile Intrigue bent in half and smashed through the rear window of the car, sending bits of glass throughout the interior of the vehicle. The serious eye injuries suffered by Richard E. Birdsall were detailed in his Proof of Claim filed on Oct. 9, 2009. These Claimants were the Plaintiffs in Birdsall v. General Motors, Case # 3:08-CV-00743-J-25-JRK in U. S. Dist. Court Middle Dist. of Fla, until this bankruptcy case was filed. The medical report attached to Ex. B, also confirms that the prescriptions being taken by Mr. Birdsall, as a result of these eye injuries, must be taken throughout the rest of his life.

#### CERTIFICATION OF SERVICE

I HEREBY CERTIFY that this RESPONSE TO DEBTOR’S FIFTEENTH OMNIBUS OBJECTION TO CLAIMS, (DOC. #5731) AND MOTION TO MERGE CLAIMS AGENT’S “CLAIM NUMBERS” 58954 & 65890 INTO #7617 & #7618 has been served upon Vito Genna, Clerk of the U.S. Bankruptcy Court, Southern Dist. of New York, One Bowling Green, New York City, N.Y. 10004 and all the below-listed parties by electronic filing and in accordance with Gen. Order M-182, June 22, 2010.

1. The Garden City Group, Inc., ATTN: Motors Liquidation Co. Claims Processing, 5151 Blazer Parkway, Suite A., Dublin, Ohio, 43017;

2. Attorneys for the Debtor, Weil, Gotshal & Manges, Esqs., Attention Harvey Miller, Esq., S. Karotkin, Esq & J. Smolinsky, Esq., 767 Fifth Ave., New York City, NY 10153;
3. Office of the U.S. Trustee, Attention Diana G. Adams, Esq., 33 Whitehall Street, 21<sup>st</sup> Floor, New York City, NY 10004;
4. Attorneys for the Committee of Unsecured Creditors, Kramer, Levin, Esqs., Attn; T. Moers, Esq., Amy Caton, Esq & L. macksoud, Esq & J. Sharret, Esq., 1177 Avenue of the Americas, New York City, NY 10036;
5. the debtors, c/o Motors Liquidation Co., 500 Renaissance Ctr. Suite 1400, Detroit Mich., 48243, Attn: Ted Stenger;
6. General Motors, LLC., 400 Renaissance Ctr., Detroit, Mich. 48265, Attn L. S. Buonomo, Esq.;
7. Cadwalader, Wickersham& Taft, LLP., One World Fin. Ctr. N.Y., N.Y., 10281, Attn: John J. Rapisardi, Esq.;
8. U.S. Dept. of Treasury, 1500 Pennsylvania Ave., N.W., Rm 2312, Washington, D.C., 20220, Attn: J. Samarias, Esq.;
9. Vedder, Price, P.C., 1633 Broadway, 47<sup>th</sup> Floor, N.Y., N.Y., 10019, Attn: Michael Edelman, Esq. & M. Schein, Esq.;
10. U.S. Attorney's Office, S.D.N.Y., 86 Chambers St., 3<sup>rd</sup> Floor, N.Y. N.Y., 10007, Attn: David Jones, Esq & Nat Kuehler, Esq.;
11. Caplan & Drysdale, Chartered, 375 Park Ave., 35<sup>th</sup> Floor, N.Y., N.Y., 10152-3500, Attn Elihu Inselbuch Esq. & Rita Tobin, Esq. and One Thomas Cir., N.W., Suite 1100, Washington D.C. 20005, Attn: T. Swett, III, Esq. & K. Maclay, Esq.;
12. Stutzman, Bromberg, Esserman & Plifka, 23232 Bryan St., Suite 2200, Dallas, Tex., 75201 Attn: S. Esserman, Esq & R. Broussseau, Esq.

  
EDWARD S. DONINI, ESQ.

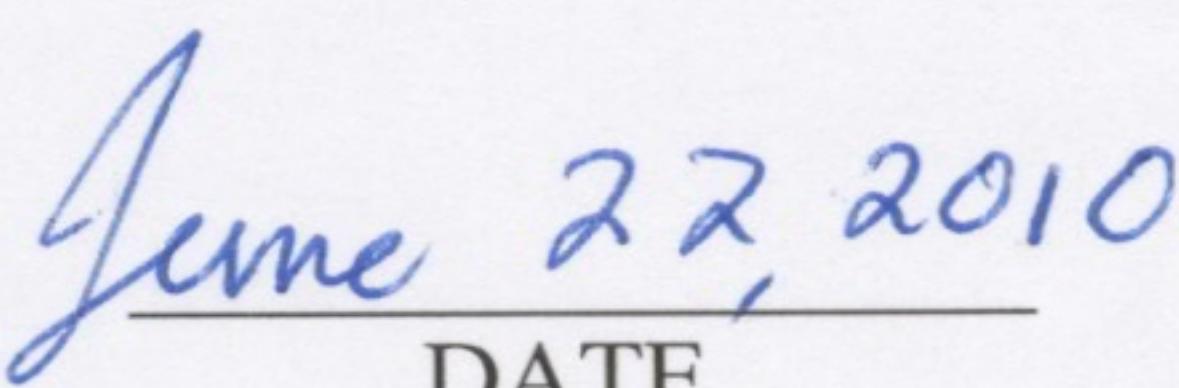
Fla. Bar # 0984787

P.O. Box 605

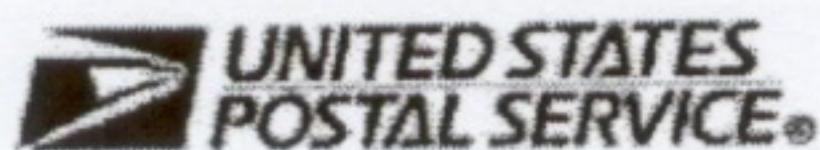
New Smyrna Bch., FL 32170

Tel.: (386) 760-1941

Attorney for Creditors, Richard & Elise Birdsall

  
June 22, 2010

DATE

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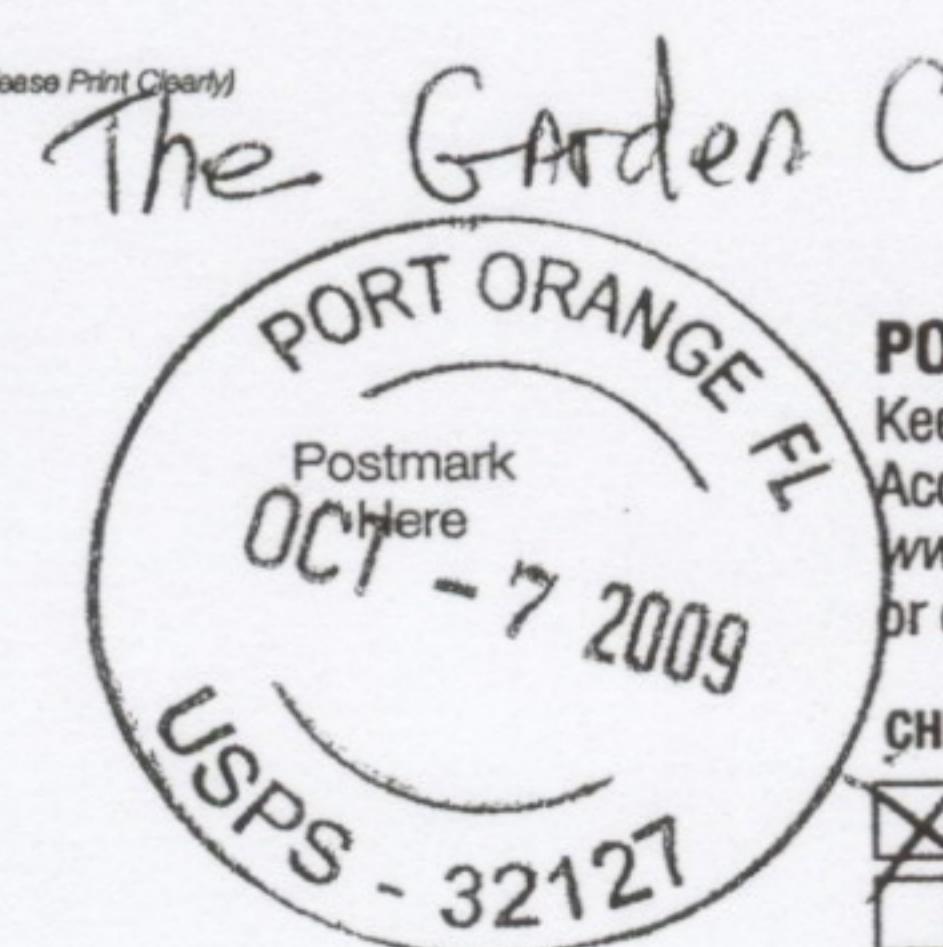
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PS Form 152, May 2002

Ex A.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re  
MOTORS LIQUIDATION COMPANY  
f/k/a GENERAL MOTORS CORP. et al  
Debtors.

Chapt. 11  
Case #2009-50026-REG  
(Jointly Administered)  
Judge Robert E. Gerber

FIRST AMENDMENT TO PROOF OF CLAIM, FILED OCT. 7, 2009, OF  
CLAIMANTS, RICHARD AND ELISE BIRDSALL

Claimants, Richard and Elise Birdsall, former Plaintiffs in the Federal Case known Birdsall v. General Motors, Case # 3:08-CV-00743-J-25-JRK in U. S. Dist. Court Middle Dist. of Fla, now claimants in this Bankruptcy Proceeding, hereby file their First Amendment to their Proof of Claim.

1. Claimants, Richard E. Birdsall and Elise M. Birdsall, filed their Initial Proof of Claim Forms on Oct. 7, 2009, received by Garden City Group, by Proof of Mailing on Oct. 9, 2009. The Proof of Claim, of Richard E. Birdsall had, appended to it, Exhibits. A, B, C & D. The Proof of Claim Form of Elise M. Birdsall incorporated by reference said Exhibits which were attached to her husbands Proof of Claim, also filed Oct. 7, 2009.
2. Richard Birdsall, was seriously injured, when the defective roof molding, on his 2000 Oldsmobile Intrigue bent in half and smashed through the rear window of the car, sending bits of glass throughout the interior of the vehicle. The serious eye injuries suffered by Richard E. Birdsall were detailed in his Proof of Claim filed on Oct. 7, 2009. The second aspect of

Ex. B

negligence/product liability is the fact that G.M. made a calculated decision not to spend the money to use the available, modern, laminated (shatterproof) glass, but, instead, continued to use the less-safe, tempered glass. Find attached hereto, as Ex. E, the updated, 2-pg. report of Eye Surgeon, Todd P. Thompson, dated 10/20/09. Said report confirms Mr. Birdsall has suffered a 50% reduction in vision, in his right eye, due to the imbedded glass stemming from this accident. Said report also reflects that the scratching in the right eye is the result of corneal scarring, also caused by the glass in Mr. Birdsall's eyelid, as the result of this accident. Although Mr. Birdsall has had 2 operations, to remove bits of glass from his right eye, the said scarring, on his cornea, remains another aspect of permanent injury. The report of Dr. Thompson also reflects, in paragraph #3, that the recommended operation may not be successful and that all of the said conditions are permanent. Finally, the attached medical report also confirms that the prescriptions being taken by Mr. Birdsall, as a result of these eye injuries, must be taken throughout the rest of his life. The report also confirms that the treatment and medications, being taken by Mr. Birdsall were probably caused by this accident within a reasonable degree of medical probability or certainty. The law is the same in all 50 states: as long as there is medical testimony available,

supporting an injury as having been caused, by the accident, "within a reasonable degree of medical probability or certainty", each of the said injuries are admissible in evidence. Hobbs v. Sauers, 359 So.2d 915 (3<sup>rd</sup> DCA 1978); Shearon v. Sullivan, 821 So.2d 1222 (1<sup>st</sup> DCA 2002).

3. The estimate of each of each Claimants' damages, of \$325,000.00, as stated in each of their respective Proofs of Claim, is a conservative estimate. This Court is strenuously requested to award said amount to Mr. and Mrs. Birdsall. Mr. Birdsall's personal injuries alone, have an average jury verdict of \$400,000.00 to 1.4 million dollars. Southern Bell Co. v. Welden, 483 So.2d 487 (1<sup>st</sup> DCA 1986). See also Gautreaux v. Scurlock Marine Inc., 84 F. 3d 776 (5<sup>th</sup> Cir. U.S. Dist. Ct. 1996).

4. An additional unit of measurement, for these damages, which would ordinarily be done by the jury, would be to use the Life Tables for U.S. Social Security. According to those tables, Mr. Birdsall has a life expectancy of 85 years. Since he is now 72 years of age, he has 13 years left on his average life expectancy. Mr. Birdsall's injuries, operative procedures, and loss of vision, is worth at least \$100.00 per day. 365 days per year times \$100.00 per day is \$36,500.00 per year. The sum of \$36,500.00 per year multiplied by the 13 years left of his life expectancy equals total damages in the amount of \$474,500.00. This does not

include the medical bills, upcoming recommended surgery, future medical bills and the consortium claims of Mrs. Birdsall.

5. Please elevate this case to a position of prominence, on the list of unsecured creditors.

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that this First Amendment To Proofs of Claim has been served upon Vito Genna, Clerk of the U.S. Bankruptcy Court, Southern Dist. of New York, One Bowling Green, New York City, N.Y. 10004 and all the below-listed parties by first class mail, Nov. 20, 2009.

1. The Garden City Group, Inc., ATTN: Motors Liquidation Co. Claims Processing, 5151 Blazer Parkway, Suite A., Dublin, Ohio, 43017;
2. Attorneys for the Debtor, Weil, Gotshal & Manges, Esqs., 767 Fifth Ave., New York City, NY 10153;
3. Office of the U.S. Trustee, Assistant Trustee Brian Masumoto, Esq., 33 Whitehall Street, 21<sup>st</sup> Floor, New York City, NY 10004;
4. Attorneys for the Committee of Unsecured Creditors, Kramer, Levin, Esqs., 1177 Avenue of the Americas, New York City, NY 10036.

Richard E. Birdsall  
CLAIMANT, RICHARD E BIRDSALL

11/20/09

DATE

Elise M. Birdsall  
CLAIMANT, ELISE M. BIRDSALL

Nov. 20, 2009  
DATE

Edward S. Donini  
EDWARD S. DONINI, ESQ.  
Fla. Bar # 0984787  
P.O. Box 605  
New Smyrna Bch., FL 32170  
Tel.: (386) 760-1941  
Attorney for Creditors, Richard & Elise Birdsall

Nov. 20, 2009  
DATE



## EYE CENTER OF ST. AUGUSTINE THE EYE SURGERY CENTER OF ST. AUGUSTINE

PAUL W. HUND, III, M.D.

TODD P. THOMPSON, M.D.

N. PATRICK HALE, M.D.

ELIZABETH K. McLEOD, M.D.

MICHAEL A. DAGOSTINO, O.D.

TODD S. HOCKETT, O.D.

October 20, 2009

Edward S. Donini, ESQ  
P.O. Box 605  
New Smyrna Beach, FL 32170

### ST. AUGUSTINE

1400 US Highway 1 South  
St. Augustine, Florida 32084  
(904) 829-2286

### PALM COAST

14 Office Park Drive, Suite 4  
Palm Coast, Florida 32137  
(386) 445-1279

### WORLD GOLF VILLAGE

319 West Town Place, Ste. 8  
St. Augustine, Florida 32092  
(904) 940-9200

Dear Edward,

I hope this letter will answer your questions about Mr. Birdsall.

- 1.) Mr. Birdsall's vision in his right eye has been reduced by the incident from best corrected 20/20 to 20/40. This equates to a 50% reduction in vision.
- 2.) The scratch feeling in his right eye is a result of corneal scarring probably from the glass found in his eyelid after the incident.
- 3.) There is no guarantee that the surface ablation to remove the corneal irregularities will be completely successful. A more informed opinion would come from a cornea specialist also who performs these procedures.
- 4.) a. Yes  
b. Yes

Sincerely,

Todd P. Thompson, M.D.  
TPT/sl

*Accredited by the*



ACCREDITATION ASSOCIATION  
for AMBULATORY HEALTH CARE, INC.

Dr. Todd Thompson, Ophthalmologist October 9, 2009  
The following 4 questions require your specific answers so that Mr. Birdsall's claim on General Motors may proceed in a timely and proper manner. There are official deadlines that must be met so that the claim is kept active.

- 1) What percentage of diminution of eyesight in Mr. Birdsall's right eye have you found he has been suffered because of glass that went into his eye? (Probably caused by the accident.)
- 2) Is the scratchy feeling in his right eye probably caused by the accident with glass going into the eye with resultant scarring?
- 3) Is there any guarantee that procedures done to resurface the cornea so that altered area(s) are smooth will be completely successful?
- 4) Since this accident Mr. Birdsall has been taking Optive and Genteal prescribed by you and Dr. Schwann.
  - a) Will he probably have to continue these throughout his lifetime?
  - b) Was this treatment probably necessitated by the injuries caused by this accident?

E. Donini, Esq. needs specific answers to these 4 queries in a letter from you as soon as you receive them.

General Motors is in bankruptcy. No court depositions or trial will take place on this matter. Your responses to the above questions will be the basis for the settlement of Mr. Birdsall's wholly justified claim of damages caused by the accident. Your specific responses must be received swiftly for expeditious filing prior to official deadlines.

Hand delivery of these questions by Mr. Birdsall will take place ASAP. 10/12/2009

\$ Statement